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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SONYA M. DANIELS,

Petitioner-Appellant,

vs.

GLORIA HENRY,

Respondent-Appellee.

No. 07-15728

D.C. No. CV-03-5293-VRW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted May 13, 2008
San Francisco, California

Before: KLEINFELD and N.R. SMITH, Circuit Judges, and MILLS, District Judge.^{**}

Sonya M. Daniels was convicted under California law of second degree murder, felony child endangerment (which included great bodily injury), and misdemeanor

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Richard Mills, Senior United States District Judge for the Central District of Illinois, sitting by designation.

child endangerment. Daniels was sentenced to serve fifteen years to life imprisonment for the murder conviction and concurrent terms on the other convictions. After her direct appeals and state post-conviction remedies were exhausted, Daniels filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, which was denied by the district court. We AFFIRM.

The Petitioner contends that her constitutional right to present a defense and her right to a fair trial were violated when the trial court prevented her from introducing evidence pertaining to Battered Women's Syndrome. The state court's decision to exclude the evidence was not "contrary to, [n]or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Based on the defense she offered at trial, that evidence was not relevant under California law. The Petitioner's defense essentially was that the child appeared to be fine until the day he died. She did not argue that she was unable to feed her son or obtain proper care for him because she was a battered spouse. "The accused does not have an unfettered right to offer testimony that is . . . inadmissible under standard rules of evidence." Taylor v. Illinois, 484 U.S. 400, 410 (1988).

Further, the trial judge did not bar the Petitioner from establishing a foundation to make the evidence relevant. Upon review of the record, we find that the trial judge

left the door open to the admission of testimony pertaining to Battered Women's Syndrome, if Petitioner could establish its relevance. The Petitioner, however, failed to lay a proper foundation. Accordingly, the district court properly denied relief.

The other issues presented by the Petitioner are without merit. For the reasons already noted, the Petitioner is unable to show prejudice from the ineffective assistance of appellate counsel in failing to brief the Battered Women's Syndrome issue on direct appeal. The Petitioner did not factually develop the argument that the prosecutor's cross-examination and closing argument rendered her trial fundamentally unfair.

AFFIRMED.